

29 MAR 2007



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In re Application of :
FAITA et al. :
Application No.: 10/583,023 :
PCT No.: PCT/EP04/014420 : DECISION on
Int. Filing Date: 17 December 2004 :
Priority Date: 19 December 2003 : MERGING APPLICATION FILES
Attorney Docket No.: 19214-016US1 :
For: MEMBRANE FUEL CELL COUNTERCURRENT:
FED WITH NON-HUMIDIFIED AIR :

The above-identified application is before the PCT Legal Office for matters arising under 35 U.S.C. 371.

BACKGROUND

On 17 December 2004, applicant filed international application No. PCT/EP04/14420, which claimed priority of an earlier international application filed 19 December 2003 and designating the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 30 June 2005. The deadline for entering the U.S. national stage to 30 months or as of midnight on 19 June 2006.

On 15 June 2006, applicant filed, through the law firm of Fish & Richardson, a transmittal letter for entry into the national stage in the United States (Form PTO-1390) which was accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). The submission, identifying PCT/EP04/14420, was assigned U.S. application number: 10/583,023. An oath or declaration was not filed with the national stage entry.

On 5 February 2007, applicant, through the law firm of Hedman and Costigan, filed another Transmittal Letter referencing PCT/EP04/14420 and requesting entry into the national stage in the United States. This communication was accompanied by, *inter alia*, a copy of the international application PCT/EP04/14420 and a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b). An unexecuted declaration was also filed.

DISCUSSION

As is evident from the above recited facts, applicant submitted papers to enter the national stage for the same international application on 15 June 2006 and on 05 February 2007. The end result for an international application designating the United States of America is a single U.S. national stage application¹. Therefore, assigning a second U.S. application number arising from PCT/EP04/14420 is improper.

Applicant's petition to revive an unintentionally abandoned application under 37 CFR 1.137(b) is considered MOOT. The papers filed on 05 February 2007 will be merged with application no. 10/583,023. All fees paid on 05 February 2007 will be refunded to applicant's credit card.

Applicant is advised to use U.S. application number: 10/583,023 as the national stage application of PCT/EP04/14420.

CONCLUSION

Applicant's petition to revive an unintentionally abandoned application under 37 CFR 1.137(b) is MOOT. The papers filed on 05 February 2007 will be merged with application no. 10/583,023.

The application will be forwarded to the United States Designated/Elected Office for further processing, including issuance of a Notification of Missing Requirements indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) & (b) and executed by the inventors, is required..



Cynthia M. Kratz
Attorney/Advisor

¹ 35 U.S.C. 363 states:

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in 102(e) of this title. (emphasis added)

Further, 35 U.S.C. 371(b) states:

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2), or under article 39(1)(a) of the treaty. (emphasis added)

The language of 35 U.S.C. 363 and 371 refers to the national stage of the PCT in the singular only, and thus only one (1) national stage application in the U.S. may develop from an international application.

Application No.: 10/583,023

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PCT Legal Office

Telephone: (571) 272-3286

Facsimile: (571) 273-0459

cc: CHARLES A. MUSERLIAN
HEDMAN AND COSTIGAN
1185 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036